

# United States Senate

WASHINGTON, DC 20510

November 12, 2003

## **Support AHPs: Small Businesses Need Relief from Skyrocketing Health Insurance Rates**

Dear Colleagues:

You have received a Dear Colleague letter calling your attention to a letter from the National Association of Attorneys General (NAAG) expressing opposition to the Small Business Health Fairness Act, S. 545. The NAAG letter you received was addressed to the Chairman and Ranking Member of the Senate Budget Committee. NAAG sent an identical letter to the Chairmen and Ranking Members of the Senate and House committees of jurisdiction back in May. A response to the May letter is attached, and because these two letters are identical, that response is still appropriate.

Since the introduction of this bill in March, we have heard from thousands of small businesses from around the country about the crisis they are facing trying to afford health insurance for their employees. Many are now getting their renewal notices and are facing increases above 30% on top of similar increases that they have absorbed in recent years. The Kaiser Family Foundation recently reported that health insurance premiums soared 13.9 percent in 2003, the third year of double-digit growth and the biggest spike since 1990. The same survey found that firms with three to nine workers faced the largest increase with a 16.6 percent surge in premiums.

Quite simply, this is a burden that many small businesses can no longer afford. Those who are able to maintain coverage are passing more of the costs onto their employees. The Kaiser survey found that employees' out-of-pocket costs are continuing to rise as the portion of the premium paid by an employee for family coverage grew 12.9 percent to \$201 a month, or \$2,412 annually, while the amount a single employee paid for a policy rose 7.6 percent to \$42 a month or \$504 a year. These increases in health insurance costs often mean that the employees no longer get the benefit of salary increases.

As a result, many employees, especially the young and healthy, opt out of health insurance because they do not believe they need it. Other employees are just unable to absorb the increased costs and are forced to discontinue the coverage. The combined effect is to increase the number of uninsured people and those who need substantial medical services thus further increasing the rates. The U.S. Census Bureau recently reported that in 2002 43.6 million people were without health insurance, an increase of 2.4 million from the previous year. This trend is guaranteed to increase the ranks of the employed but uninsured which already comprise as much as 85% of the total uninsured population as well as 60% of the uninsured population who work for, or are in a family of someone who works for, a small business.

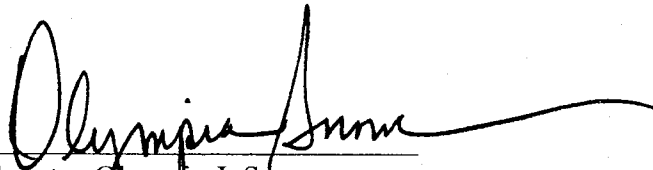
Association Health Plans (AHPs) as created by our bill, would allow small businesses to pool their employees together under insurance plans offered by bona fide associations and give them the same advantages in the insurance market currently enjoyed by large employers and unions. There are already 72 million people covered by 275,000 large employer and union plans which offer benefits so generous that many people stay in those jobs just to maintain the health insurance.

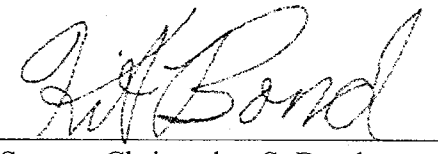
Small businesses have consistently told us that they have no choices and no leverage in the insurance market. They are completely at the mercy of the few insurance companies willing to provide coverage to them – in many states there is only one such company. With small businesses creating 75% of our nation's new jobs, we need to give them better and more options in health insurance so they can compete with larger employers for the skilled employees they need.


We believe AHPs will put small businesses on a level playing field with large employers and allow them to compete for the skilled employees they need to expand and thrive. As our country struggles to revive its economy, small businesses will be the dominant force in creating jobs. The high cost of health insurance is being cited as one reason some businesses are not adding new jobs. These businesses must be able to offer competitive health insurance benefits to attract the caliber of employee necessary for that business. In small businesses, many employees play multiple roles and each new hire must be the best available because of the increased burden which that employee will have to carry.

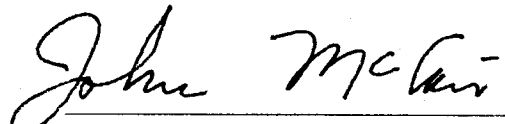
We must do everything possible to liberate small businesses from the health insurance tyranny they currently face where they have no choices and no leverage in the market. Please support S. 545 and help us give small businesses the access to affordable health insurance they deserve.

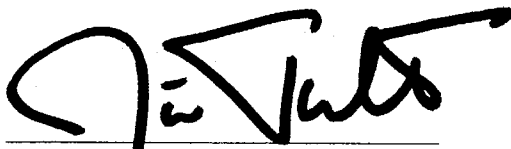
Sincerely,

  
Senator Olympia J. Snowe  
Maine

  
Senator Christopher S. Bond  
Missouri

  
Senator Kay Bailey Hutchison  
Texas

  
Senator John McCain  
Arizona

  
Senator Jim Talent  
Missouri

# United States Senate

WASHINGTON, DC 20510

June 9, 2003

BY FACSIMILE  
ORIGINAL BY U.S. MAIL

The Honorable W.A. Drew Edmondson  
President  
National Association of Attorneys General  
750 First Street, N.E.  
Suite 1100  
Washington, DC 20002

Dear Mr. Edmondson:

We have received copies of the April 24, 2003 letter (the Letter) signed by 38 of your members raising objections to the Small Business Health Fairness Act of 2003 (S. 545). As sponsors of this legislation, we would like to respond to the points made in the Letter and reaffirm our belief that this legislation will provide small businesses with better health insurance options and maintain the level of protections and security that consumers have come to expect. We would not sponsor this legislation if we believed the problems raised in the Letter would occur.

The concerns raised in the Letter are grounded on inaccuracies and mis-characterizations. The most glaring of these is the confusion of Association Health Plans (AHPs), our legislation would create, with the Multiple Employer Welfare Arrangements (MEWAs), which have resulted in many examples of fraud. Not only are these two types of plans completely distinguishable, but our bill includes specific measures intended to prevent the problems associated with MEWAs. For example, the sponsoring associations must have been in existence for at least three years for purposes other than providing health insurance or medical care.<sup>1</sup> This would clearly distinguish sponsors of AHPs from sponsors of MEWAs, which typically are formed solely for the purpose of selling insurance plans.

Furthermore, our bill would aid in enforcement against fraudulent plans in two important respects. The bill clarifies which plans are legitimate by specifying the requirements for an AHP to be certified, thereby making identification of fraudulent plans easier and more obvious. Indeed, the bill gives DOL enhanced criminal and civil enforcement powers currently not available to regulators. Thus, it will help stop health insurance fraud by terminating illegitimate small employer and union health plans. Illegitimate plans will become criminal enterprises, and DOL will have new "cease and desist" authority

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<sup>1</sup> See Small Business Health Fairness Act of 2003, S. 545, 108<sup>th</sup> Cong. § (2)(a) – Section 801 of Proposed Part 8, Rules Governing Association Health Plans (2003).

to curtail such activities.<sup>2</sup> Testifying about an earlier version of this bill, a former DOL Inspector General said, the “attempts to strengthen the Federal Government’s ability to combat health care fraud are important and necessary.”<sup>3</sup> Secondly, our bill enhances regulation of MEWAs by subjecting them to “any law of any State which regulates insurance.”<sup>4</sup>

The Letter also states that the Department of Labor does not have the resources or familiarity to ensure that these plans are solvent and consumers are protected against fraud. Our bill includes specific provisions to ensure the solvency of self-funded AHPs.<sup>5</sup> None of these provisions are required for any of the current ERISA or Taft-Hartley self-funded plans currently sponsored by large corporations or unions in this country.

The Department of Labor currently regulates over 275,000 of these types of plans, which cover 72 million people. Clearly, they have the expertise and resources to monitor and oversee the self-funded AHPs, which would be created by our bill. The insurance companies that would provide the coverage for fully insured AHPs, would still be subject to state solvency and fraud regulations giving consumers of these plans the same level of protections in these areas they currently enjoy. As added protection, the requirements for the sponsoring association would apply to both types of plans thus ensuring that all AHPs would have the solid organizational support necessary for their success.

We believe the Congressional Budget Office study, cited in the Letter, which claims that premiums will increase for people not in AHPs and that others will lose their coverage is deeply flawed. A House Small Business Committee hearing shortly after that study was released in January, 2000, revealed that the report was based on one study that did not accurately assess the AHPs contemplated by the legislation.<sup>6</sup> Furthermore, the CBO used economic assumptions that were more restrictive than necessary, leading to conclusions that understate the benefits that can be expected from AHPs.

In addition, the CBO concluded that the only way AHPs could offer insurance less expensively is to rely on the practice of adverse selection. We reject this notion categorically and believe the legislation, as well as the Health Insurance Portability and Accountability Act, which would cover

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<sup>2</sup> See S. 545, 108<sup>th</sup> Cong. § 5 (2003).

<sup>3</sup> Testimony of Charles C. Masten, Department of Labor Inspector General, before the Employer-Employee Relations Subcommittee of the House Committee on Economic and Educational Opportunities, Hearing on H.R. 995, 104<sup>th</sup> Cong., March 10, 1995.

<sup>4</sup> S. 545, 108<sup>th</sup> Cong. § (2)(b)(3) (2003).

<sup>5</sup> See S. 545, 108<sup>th</sup> Cong. § (2)(a) – Section 806 of Proposed Part 8, Rules Governing Association Health Plans (2003).

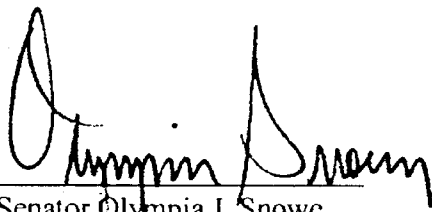
<sup>6</sup> See “Association Health Plans—Promoting Health Care Accessibility,” Hearing before the House Committee on Small Business, 106<sup>th</sup> Cong., February 16, 2000.

AHPs, both contain adequate and appropriate protections against this practice. Adverse selection would also be an anathema to the successful operation of an AHP as it would interfere with the need to get as many people in the plan as possible. As a result, it would make such a plan non-responsive to the needs of the association's members who are the intended beneficiaries of such a plan. Current nationally structured large employer and union plans are able to provide generous insurance coverage at lower rates than small businesses are charged without resorting to the practice of adverse selection. We have no intention of enacting legislation that would lead to adverse selection. If the language of the current bill is not sufficiently protective, we are open to suggestions.

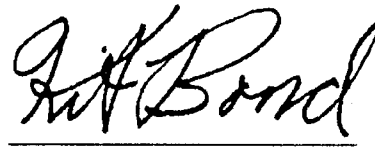
Finally, the Letter repeatedly asserts that our legislation would shut the states out from their traditional role of oversight and regulation. For those plans that are fully insured, this is simply not the case. The insurance companies that provide the coverage for these plans would continue to be subject to state oversight and regulation. We also believe, as already stated, that the Department of Labor is more than capable of providing the necessary oversight and regulation for the self-funded AHP plans just as they do now for the large employer and union self-funded plans, despite your assertions to the contrary.

AHPs would provide small businesses with the same market-based advantages that are currently available to large employers and unions in this country. Small businesses, who create the overwhelming majority of jobs in your states and throughout the nation deserve to be treated fairly when they attempt to provide this most important benefit for their employees. We are disappointed that the National Association of Attorneys General does not support this legislation, but we remain committed to pursuing its enactment as the most effective way to assist small businesses in their desire to provide health insurance for their employees.


Sincerely,




Senator Olympia J. Snowe  
Maine



Senator Christopher S. Bond  
Missouri



Senator James Talent  
Missouri



Senator Norm Coleman  
Minnesota